



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 =
Year 2 =
University =

Dear

This is in response to your ruling request dated Date 1 as amended on Date 2, seeking discretionary relief under § 301.9100-3 of the Miscellaneous Regulations ("miscellaneous regulations") for an extension of time to revoke your election under § 501(h) of the Internal Revenue Code ("Code"), effective for all tax years beginning after Date 3.

FACTS

You are exempt from federal income tax as an organization described in § 501(c)(3) of the Code and classified as a public charity under §§ 509(a)(1) and 170(b)(1)(A)(ii). You made a § 501(h) lobbying expenditure test election (the "lobbying election") on Date 4 and have not revoked the lobbying election.

Several years ago, you entered into discussions with University, which is also exempt from federal income tax as an organization described in § 501(c)(3) of the Code and classified as a public charity under §§ 509(a)(1) and 170(b)(1)(A)(ii). These discussions resulted in an agreement by which you became the sole member of University. Throughout the process, the parties conducted due diligence on each other's operations and held negotiations focused primarily on the terms of the agreement and how best to integrate your programs with those of University while allowing you to continue as a separate entity. You have represented that as a result of the agreement, you became a member of an affiliated group with University within the

meaning of § 4911(f)(2).

During the course of the negotiations and due diligence by you and the University, the impact of your lobbying election did not come to the attention of either you or the University. You had relied on a qualified attorney for legal advice on all aspects of the acquisition, including the impact of the agreement on your tax-exempt status. Your attorney did not inform you that you would be subject to the affiliation rules of § 4911(f) of the Code as a result of this transaction nor did he advise you to revoke your lobbying election to avoid the adverse consequences of § 4911(f)(2).

The accounting firm that prepared your Year 1 Form 990, Return of Organization Exempt from Income Tax, did not identify the unintended consequences of your failure to timely revoke your § 501(h) of the Code lobbying election. However, during the preparation of your Year 2 Form 990 in April 2011, your accounting firm discovered the unintended consequences of your failure to timely revoke your § 501(h) lobbying election. Under § 4911(f)(2), you became the sole electing member of the affiliated group, potentially liable for the excise tax on the affiliated group's excess lobbying expenditure.

You immediately conducted an internal review of this matter and retained an accounting firm and outside legal counsel to assist in preparing a request for discretionary relief under § 301.9100 of the miscellaneous regulations. In addition, you filed a Form 5768 revoking your § 501(h) lobbying election for the tax years beginning after Date 5. You then filed this request before the Internal Revenue Service (the "Service") initiated any examination or discovered this matter.

Granting your request will eliminate a tax liability that arose as a result of your inadvertent failure to revoke your lobbying election. It will not result in a lower tax liability than was applicable at the time you should have revoked your lobbying election.

RULING REQUESTED

You requested the following ruling:

That you be granted an extension of time to retroactively revoke your § 501(h) lobbying election effective for all tax years beginning after Date 3.

LAW

Section 501(c)(3) of the Code exempts from federal income tax entities organized and operated exclusively for charitable, educational and other exempt purposes, provided, in relevant part, that no substantial part of the organization's activities may consist of carrying on propaganda, or otherwise attempting to influence legislation except as otherwise provided in subsection (h).

Section 501(h) of the Code sets out an alternative to the "no substantial part" limitation on expenditures made for the purposes of influencing legislation. This section permits an

organization to elect to be governed by mechanical rules that set ceilings on the permissible lobbying expenditures it may make during a taxable year.

Section 501(h)(3) of the Code provides that this subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

Section 501(h)(4) of the Code provides that organizations permitted to elect to have this subsection apply include an organization that is described in § 170(b)(1)(A)(ii) (relating to educational institutions).

Section 501(h)(6)(A) of the Code provides that an organization's election under § 501(h) is effective for all taxable years which end after the date the election is made.

Section 501(h)(6)(B) of the Code provides that an organization's election under § 501(h) continues to be effective for all taxable years which begin before the date the election is revoked by the organization under regulations prescribed by the Secretary.

Section 1.501(h)-2(a) of the Income Tax Regulations ("regulations") provides that an election under § 501(h) is made by filing a completed Form 5768, Election/Revocation of Election by an Eligible § 501(c)(3) Organization to make Expenditures to Influence Legislation. This section also provides that the election remains in effect for each succeeding taxable year for which the organization is an eligible organization and which begins before a notice of revocation is filed under paragraph (d) of § 1.501(h)-2 of the regulations.

Section 1.501(h)-2(d)(1) of the regulations provides that an organization may voluntarily revoke a lobbying election by filing a Form 5768. Under section 501(h)(6)(B), a voluntary revocation is effective with the beginning of the first taxable year after the taxable year in which the notice is filed. If an organization voluntarily revokes its election, the substantial part test of section 501(c)(3) will apply with respect to the organization's activities in attempting to influence legislation beginning with the taxable year for which the voluntary revocation is effective.

Section 4911(f)(1)(A) of the Code provides that when two or more organizations are affiliated, and at least one has made an election under § 501(h), the determination as to whether excess lobbying expenditures have been made and the expenditure limits of § 501(h)(1) have been exceeded, shall be made as though the affiliated organizations are one organization.

Section 4911(f)(2) of the Code defines membership in an affiliated group, for the purposes of the preceding paragraph: when the governing instrument of one organization requires it to be bound by the decisions of another on legislative issues, or the governing board of one

organization includes persons who are either specifically designated representatives or members of the governing board, officers, or paid executive staff of another organization; and who by aggregating their votes have sufficient power to cause or prevent action on legislative issues by the first organization.

Section 301.9100-1(a) of the miscellaneous regulations provides that the regulations under this section and §§ 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

Section 301.9100-1(b) of the miscellaneous regulations defines a regulatory election as an election the due date of which is prescribed by a regulation published in the Federal Register, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) of the miscellaneous regulations gives the Commissioner discretion to grant a taxpayer a reasonable extension of time, but no more than six months to make a regulatory or statutory election.

Section 301.9100-3(a) of the miscellaneous regulations provides that requests for extensions of time to file regulatory elections will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the miscellaneous regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

- i. Requests relief before the failure to make the regulatory election is discovered by the Service;
- ii. Failed to make the election because of intervening events beyond the taxpayer's control;
- iii. Failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- iv. Reasonably relied on the written advice of the Service; or
- v. Reasonably relied on a qualified tax professional who failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) of the miscellaneous regulations provides that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer:

- i. Seeks to alter a return position for which an accuracy related penalty could be imposed under § 6662 of the Code at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;

- ii. Was informed in all material respects of the required election but chooses not to make the election; or
- iii. Uses hindsight in requesting relief. If specific facts have changed since the original deadline that makes the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) of the miscellaneous regulations states that the Service will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the Government are prejudiced when:

- i. Granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if there is a resulting decrease in the aggregate tax liability for all affected taxpayers.
- ii. If the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under § 6501(a) of the Code before the taxpayer's receipt of a ruling granting relief under this section, the Government's interests are ordinarily prejudiced.

Section 6501(a) of the Code provides that, in general, the amount of any tax imposed must be assessed within three years after the return was filed.

Section 6662 of the Code imposes an accuracy related penalty for any underpayment of tax required to be shown on a return, if that underpayment is attributable to one of several different actions.

Rev. Rul. 83-74, 1983-1 C.B. 112, granted relief under § 301.9100-1 of the procedure regulations to a homeowner's association seeking to revoke its § 528 election. The Service reasoned that the situation of a taxpayer seeking relief to revoke an election is analogous to one where a taxpayer is seeking relief to make an election, and thus the provisions of § 301.9100-1 of the miscellaneous regulations are applicable.

ANALYSIS

A taxpayer may seek relief under § 301.9100-3 of the regulations for an extension of time to file a regulatory election. An election whose due date is published in the Federal Register is considered a regulatory election under § 301.9100-1(b). The due dates for making and revoking lobbying elections under § 501(h) of the Code are published in the Federal Register, pursuant to a grant of authority under § 501(h)(3). Therefore, the § 501(h) lobbying election is a

regulatory election within the meaning of § 301.9100-1(b).

A taxpayer seeking relief to revoke an election is in a position analogous to one seeking relief to make an election, and thus the provisions of § 301.9100-3 of the miscellaneous regulations are applicable. Rev. Rul. 83-74, *supra*. Because you are seeking relief to revoke an election, Rev. Rul. 83-74 allows you to seek relief under the provisions of § 301.9100-3.

Relief may be granted if the taxpayer establishes to the satisfaction of the Commissioner that he acted reasonably and in good faith, and that the relief will not prejudice the interests of the Government. § 301.9100-3(a) of the miscellaneous regulations. A taxpayer may demonstrate that he has acted reasonably and in good faith by requesting relief before the Service discovers his failure to make the regulatory election, among other methods. § 301.9100-3(b) of the miscellaneous regulations. You made this request before the Service discovered your failure to revoke the election. Therefore, you will be deemed to have acted reasonably and in good faith, provided that none of the circumstances in § 301.9100-3(b)(3) apply.

Section 301.9100-3(b)(3) of the miscellaneous regulations sets out three circumstances which show that a taxpayer has not acted reasonably or in good faith, but none apply to you. In this case, you are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time relief is requested. In addition, you were not informed in all material respects of the required election and chose not to make the election. Further, you are not using hindsight in requesting relief because no facts have changed since the due date of the revocation that would make the revocation more advantageous. Therefore, you are deemed to have acted reasonably and in good faith within the meaning of § 301.9100-3(b)(3).

In addition, for relief to be granted, a taxpayer must also establish that an extension of time would not prejudice the interests of the Government. § 301.9100-3(a) of the miscellaneous regulations. The interests of the Government would be prejudiced if granting relief would result in the taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely made. § 301.9100-3(c)(1)(i). If you make a retroactive revocation of your lobbying election, your tax liability, and that of your affiliates, will be the same as it would have been if you had made the revocation during your tax Year 1, before the agreement took effect. Allowing you to revoke your lobbying election would not result in you having a lower tax liability in the aggregate for all taxable years affected by the election than you would have had if the election had not been timely made. Therefore, the interests of the Government will not be prejudiced because you have a lower tax liability.

The interests of the Government could also be prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under § 6501(a) of the Code. § 301.9100-3(c)(1)(ii) of the miscellaneous regulations. You have stipulated that all tax years for which the revocation of your lobbying election should have been made are not closed by the period of limitations on assessments under § 6501(a). Therefore, the year in which the election should have been made and the years which the revocation would

affect are still open, and the interests of the Government will not be prejudiced.

Based on all of the facts and information submitted and the representations made, it is our determination that you acted reasonably and in good faith and granting the requested relief will not prejudice the interests of the Government.

RULING

Based on your facts and representations, we rule as follows:

You are granted an extension of time of 30 days from the date of this letter ruling to file a revocation of your lobbying election, to be effective for all tax years beginning after Date 3. You should attach this letter to your amended return.

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437